IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 20.7.2006

Coram:

The Hon'ble Mr.JUSTICE S.RAJESWARAN

C.R.P.(PD) No.728 of 2004

M/s.Remson Industries Ltd. rep.
by its Managing Director
Mr.Kejriwal, having its Registered
office at No.88-B, Government
Industrial Estate, Kandivili West
Bombay-400 067. .. Petitioner/Defendant

vs.

M/s.Usha Agencies a Hindu Joint Family
Concern, represented by its Joint Family
Members, Indra, Usha Ramamoorthy
and Lakshmi Ramamoorthy
having their Head Office at
No.76 Ramamoorthy Colony
Peravellore, Chennai.600 082 .. Respondent/Plaintiff

Revision Petition filed under Article 227 of the Constitution of India against the order dated 8.1.2004, made in I.A.No.423/2003 in O.S.No.10506/1996, passed by the XII Asst. Judge, City Civil Court, Chennai.

For Petitioner : Mr.K.G.Vasudevan
For Respondents : No Appearance

ORDER

The defendant in O.S.No.10506/1996 is the revision petitioner.

2. O.S.No.10506/1996 was filed by the plaintiff/partnership firm, represented by its partner R.Indra for a judgment and decree directing the defendant/petitioner herein to pay a sum of Rs.1,22,234.11 being the agency commission due to the plaintiff firm.

3. The plaintiff filed an Application in I.A.No.423/2003 under Order 6 Rule 17 of the Code of Civil Procedure praying to amend the name of the plaintiff as a Hindu joint family concern instead represented by its

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partner R.Indra and also for consequential amendments. The trial court by an order dated 8.1.2004 allowed I.A.No.423/2003 and aggrieved by the said order, the above Civil Revision Petition Petition has been filed by the defendant in the suit.

4. Heard the learned counsel for the revision petitioner and there is no representation on behalf of the respondent despite the notice having been received by them.

5. The suit was filed by the partnership firm represented by its partner R.Indra. It is specifically stated in the plaint that the partnership firm was registered under the Indian Partnership Act, 1932 having their Head Office at Chennai and branch office at Vellore. The photo copy of the deed of partnership dated 17.5.1983 was found place in the list of documents filed on behalf of the plaintiff under Order 7 Rule 14(1) C.P.C. After merely seven years, I.A.No.423/2003 was filed by R.Indra claiming herself as one of the joint family members of the plaintiff joint family concern for amendment of the plaint to delete the words "represented by its partner R.Indira" in the name of the plaintiff and instead to substitute the words "a Hindu joint family concern represented by its joint family members, R.Indira, Usha Ramamoorthy and Lakshmi Ramamoorthy" and for consequential amendments.

6. I have gone through the copy of the affidavit and petition filed in I.A.No.423/2003 which are available in the typed set of papers filed by the revision petitioner. In the cause title of the petition and affidavit in I.A.No.423/2003 even before the amendment would be ordered by the trial court, the intended amendment was already carried out by the plaintiff. Further the suit was filed by the partnership firm represented by its partner R.Indra, whereas I.A.No.423/2003 was filed by a joint family concern represented by three of its joint family members. It is also not explained as to how the partnership concern which came into existence on 17.5.1983 could suddenly become a Hindu joint family concern. By granting the amendment, the suit itself was now filed by joint family concern whereas originally it was filed by a partnership firm. Thus the nature of the suit was changed by allowing amendment petition.

7. I find some force in the submission of the learned counsel for the revision petitioner that such an amendment which alters the suit itself ought not to have been granted by the trial court. A reading of the order of the trial court makes it clear that the trial court has not properly considered the facts and issues pending before it and granted the amendment by misdirecting itself without considering the legal aspects.

8. Hence the order of the trial court has to be set aside and consequently the same is set aside.

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9. In the result, the Civil Revision Petition is allowed. No costs. C.M.P.No.7086/2004 is closed and V.C.M.P.No.10600/2005 is dismissed.

sks

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Registrar, City Civil Court, Chennai.104.

2. The XII Asst.Judge,
City Civil Court, Chennai,

1 cc To Mr.K.G.vasudevan, Advocate, SR.31956.

C.R.P.(PD)728/04.

JE(CO)
RVL 05.08.2006

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